

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESAL PRICE  
LITIGATION

MDL No. 1456  
Master File No. 1:01-CV-12257-PBS  
Sub-Category Case No. 1:08-CV-11200

THIS DOCUMENT RELATES TO:  
*United States ex rel. Linnette Sun and Greg  
 Hamilton, Relators*  
 v.  
*Baxter Healthcare Corporation*

Judge Patti B. Saris

## MAY 2012 STATUS REPORT

The undersigned counsel for hereby submit the attached Status Report for May 2012.

DATED this 3rd day of MAY 2012.

Respectfully submitted,

/s/ David Chizewer  
Counsel for Relators

Mark Allen Kleiman  
**LAW OFFICES OF MARK ALLEN  
KLEIMAN**  
2907 Stanford Avenue  
Venice, CA 90292

Lauren John Udden  
**LAW OFFICES OF LAUREN JOHN  
UDDEN**  
15 W. Carrillo St., Ste. 101  
Santa Barbara, CA 93101

David Chizewer  
**GOLDBERG KOHN**  
55 East Monroe Street  
Suite 3300  
Chicago, Illinois 60603-5792

Jennifer Verkamp  
**MORGAN VERKAMP LLC**  
700 Walnut Street Suite 400  
Cincinnati Ohio 45202

/s/ Shamir Patel  
Shamir Patel  
Merle DeLancey  
J. Andrew Jackson  
**DICKSTEIN SHAPIRO LLP**  
1825 Eye Street, NW  
Washington, DC 20006  
Telephone: (202) 420-2200  
Facsimile: (202) 420-2201

Counsel for Defendant Baxter Healthcare  
Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that I, Shamir Patel, an attorney, caused a true and correct copy of the foregoing, MAY 2012 STATUS REPORT, to be delivered to all counsel of record by electronic service via ECF, on MAY 3, 2012, for posting and notification to all parties.

/s/ Shamir Patel

Shamir Patel

**DICKSTEIN SHAPIRO LLP**

1825 Eye Street NW

Washington, DC 20006

Telephone: (202) 420-2200

Facsimile: (202) 420-2201

**MAY 2012 STATUS REPORT**

<b>PRIVATE CLASS CASE</b>	<i>United States ex rel. Linnette Sun and Greg Hamilton, Relators v. Baxter Hemoglobin Therapeutics and Baxter International Inc.</i>
<b>MDL DOCKET NUMBER</b>	Master File No. 1:01-CV-12257-PBS Sub-Category Case No. 1:08-CV-11200
<b>JURISDICTION</b>	D. Mass, pursuant to JPML order
<b>STATUS</b>	<ul style="list-style-type: none"> <li>• Transferred to MDL 1456 by JPML on July 14, 2008</li> <li>• Court Order entered on July 15, 2008 consolidating <i>Sun</i> case with the lead case No. 01-12257</li> <li>• Court received MDL record from the United States District Court for the District of Colorado on August 5, 2008</li> <li>• Status Conference held on June 22, 2009</li> <li>• Court entered Case Management Order with respect to briefing schedule on June 23, 2009; otherwise, all discovery is stayed</li> <li>• Defendant filed Motion for Leave to File Excess Pages on August 14, 2009 <ul style="list-style-type: none"> <li>• Relators filed Opposition to Defendant's Motion for Leave to File Excess Pages on August 20, 2009</li> <li>• Electronic order entered by the Court granting Defendant's Motion for Leave to File Excess Pages on August 21, 2009</li> </ul> </li> <li>• Defendant filed Motion to Dismiss Relators' Complaint (and accompanying Memorandum, Declaration, Exhibits, and Proposed Order) on August 14, 2009 <ul style="list-style-type: none"> <li>• Relators filed Opposition to Defendant's Motion to Dismiss Relators' Complaint (and accompanying Proposed Order) and Motion for Excess Pages on September 15, 2009</li> <li>• Defendant filed Reply in Further Support of Its Motion to Dismiss Relators' Complaint (and accompanying Declaration and Exhibits) on September 30, 2009</li> </ul> </li> <li>• Relators filed Motion to Lift Stay on Discovery (and accompanying Memorandum, Exhibits, and Proposed Order) on August 31, 2009</li> </ul>

	<ul style="list-style-type: none"> <li>• Defendant filed Opposition to Relators' Motion to Lift Stay on Discovery on September 10, 2009</li> <li>• Electronic order entered by the Court finding as moot on June 23, 2010</li> <li>• Defendant filed Motion For Leave to Conduct Limited Discovery and for an Extension of Time to Submit Reply Brief on September 23, 2009 <ul style="list-style-type: none"> <li>• Electronic order entered by the Court granting Defendant's Motion for Leave to Conduct Limited Discovery on October 15, 2009</li> </ul> </li> <li>• Defendant served Notices of Deposition and Requests for Documents on Relators on October 19, 2009 <ul style="list-style-type: none"> <li>• Relators produced documents and served Objections and Responses to Requests for Documents on November 19, 2009</li> <li>• Relators finalized document production for Linnette Sun on January 4, 2010. Production for Greg Hamilton is ongoing.</li> <li>• Defendant deposed Linnette Sun on January 19, 2010 and Greg Hamilton on January 21, 2010</li> </ul> </li> <li>• Defendant filed Supplemental Reply Brief in Further Support of its Motion to Dismiss Relators' Complaint (and accompanying Exhibits and Proposed Order) on January 27, 2010</li> <li>• Hearing on Motion to Dismiss held on February 9, 2010 at 3:30 p.m. The Court issued various rulings on the record, including dismissal of Counts II, III, and VII-XXI</li> <li>• Memorandum and Order issued by the Court denying Defendant's Motion to Dismiss on March 25, 2010. The Court dismissed without prejudice Counts I (as to all drugs other than Advate and Recombinate), II, III, and VII-XXI</li> <li>• Answer and Affirmative Defenses filed by Baxter Hemoglobin Therapeutics and Baxter International Inc. on April 19, 2010</li> <li>• Relators filed Stipulation re: Filing Non-Substantive Amendment to First Amended Complaint to Correct the Names of the Parties on June 17, 2010 <ul style="list-style-type: none"> <li>• Electronic endorsement entered by the Court approving stipulation on June 24, 2010</li> </ul> </li> </ul>
--	---

- Relators filed Second Amended Complaint on August 13, 2010
- Answer and Affirmative Defenses filed by Baxter Healthcare Corporation on August 26, 2010
- Relators filed Voluntary Dismissal of Baxter Hemoglobin Therapeutics and Baxter International Inc. on August 30, 2010
  - Court entered order of dismissal on September 29, 2010
- Defendant filed Joint Motion for Proposed Scheduling Order on August 31, 2010
  - Court entered electronic order granting motion and scheduling order on September 29, 2010
- Defendant filed Joint Motion for Entry of Scheduling Order on October 15, 2010
  - Court entered scheduling order on October 29, 2010
- Defendant filed Joint Motion for Order to Set Proposed Schedule on January 7, 2011
  - Court entered scheduling order on January 14, 2011
- Ven-A-Care and Baxter have made substantial progress and, if an agreement in principle is reached with Ven-A-Care by March 7, we would then turn our attention to resolving the Sun/Hamilton case
- Defendant filed Joint Motion for Order to Set Proposed Schedule on March 14, 2011
  - Court entered scheduling order on March 24, 2011
- Relators filed Unopposed Motion for Entry of Scheduling Order on June 27, 2011
  - Court denied motion. Schedule entered. All fact discovery shall be completed by 12/1/2011. All expert discovery shall be completed by 3/1/2012. Any motion for summary judgment shall be filed by 4/15/2012.
- Relators and Defendant participated in a Rule 26(f) conference on July 20, 2011.
- Defendant filed Partial Motion to Dismiss on July 29, 2011
  - Relators filed Opposition on August 12, 2011

	<ul style="list-style-type: none"> <li>• Baxter filed Reply on August 22, 2011</li> <li>• Hearing on motion set for November 8, 2011</li> <li>• Hearing before the Court on November 8, 2011 on Partial Motion to Dismiss. Court ordered stay of all third party discovery related to the FCA claims.</li> <li>• Court denied motion as moot on February 7, 2012.</li> <li>• Ven-A-Care and Baxter filed a Joint Motion for Order of Dismissal With Prejudice on October 7, 2011 <ul style="list-style-type: none"> <li>• The Court ordered dismissal with prejudice against Baxter on October 17, 2011</li> </ul> </li> <li>• Defendant filed Motion for Partial Summary Judgment on October 19, 2011 <ul style="list-style-type: none"> <li>• United States filed Statement Regarding the Consent of the U.S. to the Dismissal with Prejudice on November 14, 2011</li> <li>• Relators filed Opposition on November 15, 2011</li> <li>• Baxter filed Reply on November 28, 2011</li> <li>• Court allows motion with respect to remaining federal False Claims Act on February 2, 2012</li> </ul> </li> <li>• Defendant filed an Emergency Motion to Stay Discovery Pending Ruling on Baxter's Partial Motion to Dismiss and Motion for Partial Summary Judgment on October 19, 2011</li> <li>• Relators filed motion for Extension of Time to 3/30/12 and 6/29/12 and 8/12/12 to Complete Discovery Expert Discovery and Dispositive Motion Deadline on November 30, 2011 <ul style="list-style-type: none"> <li>• Baxter filed opposition on December 13, 2011</li> <li>• Motion denied without prejudice subject to renewal after the Court rules on pending dispositive motions.</li> </ul> </li> <li>• Joint interim status report filed on February 16, 2012</li> <li>• Relators filed Motion for Reconsideration on February 16, 2012 <ul style="list-style-type: none"> <li>• Defendant filed opposition on February 22, 2012</li> </ul> </li> </ul>
--	---

- Court ordered “The Government shall inform the Court in two weeks whether it seeks to take a position on the statutory claim that the relators had a statutory right to notice of settlement of its claim and a right to be heard.” on February 24, 2012
- Relators filed reply on February 27, 2012 (refiled after motion for leave granted on February 28, 2012)
- United States filed Statement in Response to Court’s February 24, 2012 Order on March 8, 2012
- Baxter filed Motion for Leave to File Response to United State’s Statement (Leave Granted March 12, 2012)
- Baxter filed Response to Statement of the United States on March 23, 2012
- Relators do not intend to seek leave for any further briefing on their Motion for Reconsideration
- **United States filed a Supplemental Brief Pursuant to Court’s February 24, 2012 Order on April 3, 2012**
- **United States filed Notice of Supplemental Authorities on April 24, 2012**
- **Hearing on Motion for Reconsideration held before Court held April 25, 2012. Court ordered parties to submit affidavits on the notice issue by 5/2/2012**
  - **Declarations re Notice filed by David Chizewer, Frederick Morgan, Terry Moritz, and Mark Kleiman on 4/30/2012**
  - **Declaration re Notice filed by Lauren Udden on 5/1/2012**
  - **United States filed Motion for Post Hearing Brief and related Brief on 5/1/2012. Leave to file granted 5/4/2012.**
  - **Baxter’s Response to Court’s Order re Notice filed on 5/2/2012. Declaration of Merle DeLancey filed under seal.**
  - **Baxter filed Notice of Clarification to its 5/2/2012 filing on 5/3/2012 with redacted version of the**



	<p><b>Declaration of Merle DeLancey.</b></p> <ul style="list-style-type: none"><li>• <b>Relators filed Relators' Very Short Response to Post-Hearing Motions and Filings by Baxter and the United States on 5/4/2012</b></li></ul>
--	--